

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CARL MOSES-HYIPEER and PATRICIA Y. SMITH,)	
)	NO. CV-05-3087-LRS
)	
Plaintiffs,)	ORDER GRANTING DEFENDANTS'
-vs-)	MOTION TO DISMISS
)	
THE YAKAMA NATION, et al.,)	
)	
Defendants.)	
)	
)	

BEFORE THE COURT is Defendants' Motion to Dismiss Plaintiffs' Complaint for Lack of Subject Matter Jurisdiction and Failure To State A Claim Upon Which Relief May Be Granted Pursuant To FRCP 12(b)(1) and FRCP 12(b)(6), filed on January 12, 2007, being heard with oral argument in Yakima, Washington on March 22, 2007. Theodore Mahr participated on behalf of Plaintiffs Carl Moses-Hyipeer and Patricia Smith. Tim Weaver participated on behalf of Defendants The Yakama Nation, et al.

DISCUSSION

Defendants argue that Plaintiffs are barred from retrying their lawsuit which was decided and dismissed by order of the Tribal Court on January 4, 2006 based on sovereign immunity. Plaintiffs did not request reconsideration nor did they file an appeal at the Tribal Court. Instead, prior to the Tribal Court ruling, on September 7, 2005,

1 Plaintiffs filed a complaint under the Indian Civil Rights Act ("ICRA"),
2 25 U.S.C. §1302(6) and (8), seeking damages and declaratory relief that
3 they be rehired by the Yakama Nation. Defendants argue that Plaintiffs
4 are barred on res judicata grounds as well as lack of subject matter
5 jurisdiction in this Court. The Court agrees with Defendants.

6 Neither 28 U.S.C. §1343(1)(4) nor 25 U.S.C. §1302(6),(8) provide a
7 basis for jurisdiction as Plaintiffs argue. Only if Plaintiffs were
8 pursuing habeas corpus relief would federal jurisdiction in this court
9 be appropriate. The ICRA is not a basis for federal court jurisdiction
10 over civil claims of the nature brought here nor did the ICRA impose a
11 waiver of sovereign immunity on tribes or their officers. See *Boe v.*
12 *Fort Belknap*, 642 F.2d 276 (9th Cir.1981) (25 U.S.C. §1302 confers no
13 jurisdiction for alleged violation of ICRA). Suits against the tribe
14 and tribal officers under the ICRA are barred by sovereign immunity.
15 *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978) (nothing in the ICRA
16 purports to subject tribes to jurisdiction of the federal courts in civil
17 actions for injunctive or declaratory relief); *Hein v. Capitane*, 201 F.3d
18 1256 (9th Cir.2000).

19 The Court finds that the Tribal Court has exclusive jurisdiction
20 over this matter. Unless and until Congress makes clear its intention to
21 permit intrusion on tribal sovereignty, 25 U.S.C. §1302 does not
22 authorize actions for the type of relief sought in this case against the
23 tribe or its officers. This Court does not have subject matter
24 jurisdiction. A cause of action lacking subject matter jurisdiction must
25 be dismissed pursuant to Fed.R.Civ.P. 12(b)(1).

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1 The Court having considered the oral and written arguments of
2 counsel, enters this Order to memorialize and supplement the oral rulings
3 of the Court.

4 **IT IS ORDERED** that:

5 1. Defendants' Motion to Dismiss Plaintiffs' Complaint for Lack of
6 Subject Matter Jurisdiction and Failure To State A Claim Upon Which
7 Relief May Be Granted Pursuant To FRCP 12(b)(1) and FRCP 12(b)(6), **Ct.**
8 **Rec. 27**, filed on January 12, 2007, is **GRANTED**. The Court finds subject
9 matter jurisdiction lacking, and, as such, refrains from ruling on the
10 alternative Fed.R.Civ.P. Rule 12(b)(6) basis for dismissal.

11 2. The District Court Executive is directed to:

12 (a) File this Order;

13 (b) Provide a copy to counsel of record; and

14 (c) **CLOSE THIS FILE**.

15 **DATED** this 23rd day of March, 2007.

16 **s/Lonny R. Suko**

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18 LONNY R. SUKO
19 UNITED STATES DISTRICT JUDGE
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